IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 615 OF 2005

Hemant Mansingh Jamnik ...Petitioner

Versus

M/s. Raj Roadway (I) & Anr ...Respondents

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Mr. S.J. Ghogare with Ms. A.Y. Patil, counsel for Petitioner

Mr. Rajiv Matkar, counsel for Respondent No.1.

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CORAM: B. H. MARLAPALLE, J.

DATED: 17TH MARCH, 2005

P. C.:-

1. Heard Mr. Ghogare with Ms. Patil, the learned counsel for the petitioner and Mr. Matkar, the learned counsel for the respondent No.1. It is clear that this petition could be disposed of at the admission stage itself by giving certain directions.

2. In the written statement filed by the present petitioner-defendant, it was clearly stated that there was no privity of contract between the plaintiffs and the defendant and, therefore, the grievance made in this petition against the order of framing issues appears to be deserving reconsideration. The petitioner has the remedy to

file an application for recasting of the issue before the trial court itself and till such an application is decided the order directing to file an affidavit by way of evidence would be stayed.

3. Hence, it is directed that if the petitioner files an application for recasting of the issues within a period of two weeks before the trial court in Summary Suit No.4562 of 2003, the same shall be heard and decided on its own merits as expeditiously as possible and preferably within a period of eight weeks thereafter. The order directing the petitioner to file an affidavit by way of evidence shall stand stayed until the application for recasting the issues is decided.

4. The petition is disposed of in terms of the above directions.

5. Writ to go forthwith to the trial Court.